

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

NATIONAL DEVELOPMENT CORP. and  
KEN COTTRELL & MICHAEL MINKOFF  
Respondents

Case No.: I-00-10705

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**FINAL ORDER**

**I. Introduction**

On November 6, 2001, the Government served a Notice of Infraction upon Respondents National Development Corporation, Ken Cottrell and Michael Minkoff, alleging that they violated the following rules: 21 DCMR 506.2, which requires compliance with an approved erosion and sedimentation plan; 21 DCMR 538.1(k), which requires graded areas to be covered temporarily by seeding or mulching; 21 DCMR 539.5, which forbids exposing graded areas in excess of 120 days; 21 DCMR 541.2, which requires all excavated materials to be placed on the uphill side of trenches; and 21 DCMR 539.4, which requires adequate erosion control measures to be in place before and during exposure. The Notice of Infraction alleged that the violations occurred on October 11, 2001 at 4519 Cathedral Avenue, N.W., and sought fines of \$100 for each violation, a total of \$500.

Respondents filed timely pleas of Deny, and I held an evidentiary hearing on January 22, 2002. Peter Nwangu, the inspector who issued the Notice of Infraction, appeared on behalf of

the Government, and Respondent Michael Minkoff appeared on behalf of all Respondents. At the hearing, I granted Respondents' unopposed motion to amend their plea to Admit with Explanation. Respondents also sought a suspension or reduction of the authorized fines. Based upon all the evidence at the hearing, and my evaluation of the credibility of the witnesses, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

Over a period of several months, Respondents undertook the exterior renovation of a residence located at 4519 Cathedral Avenue, N.W. The site slopes extensively, both from north to south and from east to west, presenting significant challenges for the collection and management of storm water and the prevention of soil and sediment runoff onto adjacent properties and into the adjoining public space. Before issuance of the building permit for the project, Respondents negotiated extensively with the owners of neighboring properties in an effort to satisfy their concerns about runoff onto both their property and the public space. I credit Mr. Minkoff's uncontradicted testimony that the neighbors had no complaints about runoff from the site during construction.

In addition to the building permit, Respondents obtained several permits to occupy public space from the Department of Public Works ("DPW"). I also credit Mr. Minkoff's uncontradicted testimony that the DPW inspectors who visited the site were satisfied with Respondents' efforts to keep the public space areas clean and free from soil runoff.

Respondents' efforts to protect against soil runoff were not always consistent with their approved erosion and sedimentation plan or with applicable regulations. For example, they did not provide straw bales or other means of perimeter control on the portion of the property that

sloped down toward the street. They also did not establish temporary cover by seeding or mulching that area. Respondents believed that they could not adopt such measures because they needed that area as a means of access to the site for their equipment and for delivery of construction materials. Respondents, however, covered the portion of the site with tarpaulins every night and on rainy days so that the soil would not erode. There is no evidence that Respondents have a history of prior violations.

Although it offered testimony showing that the violations occurred, the Government took no position at the hearing on Respondents' request for suspension or reduction of the fines.

### **III. Conclusions of Law**

Respondents' plea of Admit with Explanation establishes that they violated each of the regulations at issue in this case, *i.e.*, 21 DCMR 506.2, 21 DCMR 538.1(k), 21 DCMR 539.5, 21 DCMR 541.2 and 21 DCMR 539.4. A fine of \$100 is authorized for each violation, for a total of \$500. 16 DCMR 3201.1(c); 16 DCMR 3234.2 (c), (w), (y), (z) and (cc). A suspension of the fines is not warranted, in light of Respondents' failure to incorporate their alternative methods of controlling erosion and runoff into their approved soil and sedimentation plan. Suspension of the fines on these facts would encourage contractors to decide for themselves how best to control erosion and runoff, instead of seeking the necessary approval from the Government officials charged with evaluating and approving such measures. At the same time, however, a reduction of the fines is warranted in light of DPW's oversight and approval of Respondents' efforts at keeping the public space clean. While not a substitute for the Department of Health's approval of a plan, DPW's involvement provides objective corroboration of Respondents' claim that their violations did not cause serious harm to the environment. Respondents' lack of a history of prior

violations also warrants some reduction in the fine. Consequently, the fine for each violation will be reduced to \$65, for a total fine of \$325.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondents, who are jointly and severally liable, shall pay a total of **THREE HUNDRED TWENTY-FIVE DOLLARS (\$325)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03 (i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03 (b)(7).

/s/      **02/14/02**

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John P. Dean  
Administrative Judge